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Agenda item 19

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 August 1991]

REPATRIATION OF VIETNAMESE ASYLUM SEEKERS FROM HONG KONG

1. Human Rights Advocates is concerned with the September 1990 agreement among the UNHCR, the United Kingdom, Hong Kong, and the Socialist Republic of Viet Nam regarding the repatriation of Vietnamese asylum seekers "who, while not volunteering to return to Viet Nam, are nevertheless not opposed to repatriation". Under this new agreement Vietnamese asylum seekers in Hong Kong are to be returned to Viet Nam if they have been refused refugee status, even though they do not volunteer to return.

2. Human Rights Advocates also wishes to bring to the attention of the Sub-Commission on Prevention of Discrimination and Protection of Minorities the current negotiations among various States and intergovernmental organizations regarding the return of such non-volunteers to specialized holding centres within the country of origin.

3. Of concern is the lack of protection accorded to returnees by the Socialist Republic of Viet Nam as long as clauses of the Vietnamese penal code that permit sanctions against clandestine departure remain in effect. We wish to note that Human Rights Committee General Comment No. 15 states that "... in certain circumstances an alien may enjoy the protection of the Covenant [on Civil and Political Rights] even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise".

4. The new approach to repatriation calls into question the compliance of all who are party to the agreement, including UNHCR, with article 33 (regarding the refoulement clause) of the United Nations 1951 Convention relating to the Status of Refugees. Conclusion No. 40 of the Executive Committee of UNHCR states, in part, "The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin, should always be respected".

5. We wish to bring to the Sub-Commission's attention the right of asylum seekers to be free from coerced repatriation in situations threatening gross violations of human rights. In its comments regarding the draft declaration on the right of everyone to leave any country, including his own, and to return to his country, UNHCR notes that this right involves the responsibility of the country of origin to respect the rights of its citizens to return in safety and dignity (E/CN.4/Sub.2/1989/44/Add.6).

6. The right to return also involves the responsibility of countries of shelter or asylum to refrain from forcibly repatriating aliens within their borders who may be threatened with harm upon return to their country of origin. Treaty as well as customary international law gives rise to this responsibility. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment confirms that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he [or she] would be in danger of being subjected to torture" (article 3, para. 1).

7. Human Rights Advocates urges that the draft declaration on the right of everyone to leave any country, including his own, and to return to his country address the issue of forcible or involuntary repatriation of persons to places where they might be subjected to human rights violations.

8. We further urge that the draft declaration amplify the right to non-refoulement, and also the right to a fair determination of refugee status.